IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 30273 of 2004(D)

AGAINST THE ORDER IN IA.455/02 IN OS.70/1999 of MUNSIFF COURT, PEERUMEDU

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PETITIONERS:

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1. DR. K.S. VENU, KULANGARA HOUSE, KUTTIKANAMKARA, PEERMADE VILLAGE.

2. K.S. RAJAN, KULANGARA HOUSE, MUTTAMBALAMKARA, MUTTAMBALAM VILLAGE, KOTTAYAM DISTRICT.

BY ADV. SRI.P.N.PURUSHOTHAMA KAIMAL

RESPONDENTS:

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1. THANKAPPAN, TEA SHOP, NR.K.R.THEATRE, VANDIPERIYARKARA, MANJUMALLAY VILLAGE.

2. ASHOKAN, TEA SHOP, NR.K.R. THEATRE, VANDIPERIYARKARA, MANJUMALLAY VILLAGE.

3. THAMPY, TEA SHOP, NR. K.R. THEATRE, VANDIPERIYARKARA, MANJUMALLAY VILLAGE.

BY ADV. SRI.T.A.UNNIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: TRUE PHOTOCOPY OF THE OS NO. 70/99 BEFORE THE HON'BLE MUNSIFF COURT, PEERMADE DATED 22.03.1999.

EXT.P2: TRUE PHOTOCOPY OF THE COMMISSION REPORT FILED BY ADVOCATE COMMISSIONER N.S. RADHAKRISHNAN DATED 04.06.2004.

EXT.P3: TRUE PHOTOCOPY OF THE COMMISSION REPORT FILED BY ADVOCATE COMMISSIONER N.S. RADHAKRISHNAN DATED 04.06.2004.

EXT.P4: TRUE PHOTOCOPY OF OBJECTION IN COMMISSION REPORT IN OS NO. 70/99 DATED 11.08.2004.

EXT.P5: TRUE PHOTOCOPY OF THE ORDER IN I.A. NO. 830/2004 IN OS NO. 70/99 MUNSIFF COURT PEERMADE DATED 16.09.2004.

/True Copy/

P.A to Judge.

KURIAN JOSEPH , J

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W.P.(C) NO. 30273 OF 2004

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Dated this the 21st day of June, 2007.

JUDGMENT

The challenge is on Ext.P5 order passed by the Munsiff Court, Peermade in I.A No. 830/2004 in O.S. N o. 70/99. The application was filed objecting to the commission report and with a further prayer to remit back the commission report for a proper site inspection and report. But the application was dismissed by a cryptic order of the Munsiff which read as follows:

"No sufficient grounds. Hence petition dismissed."

2. The learned Munsiff has certainly not exercised his jurisdiction vested on him. The exercise is arbitrary, ex facie. I set aside Ext.P5. There will be a direction to the Munsiff, Peermade to properly consider the prayer in the I.A. No. 830/2004 and pass appropriate orders in accordance with law. This shall be done within a period of four months from the date of a copy of this judgment.

The writ petition is disposed of accordingly.

KURIAN JOSEPH, JUDGE.

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